

July 6, 1949

Mr. Robert D. Morrow  
Superintendent  
Tucson Public Schools  
Tucson, Arizona.

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Dear Mr. Morrow:

There has come to our attention a letter written by you dated May 17, 1949 addressed to Honorable Dan E. Garvey, Governor of Arizona, bringing to his attention the problem of retirement plan coverage for your non-certificated employees.

As you no doubt are well aware, there was adopted by vote of the people at the general election in November, 1948 (and subsequently proclaimed by the Governor), the Public Employees' Retirement Act of 1948. This act provides retirement coverage for State employees effective July 1, 1949 and supplies the machinery for the participation of municipalities in the State Plan. See Sections 22 and 25.

Municipalities include under the terms of the act "counties, cities, towns and school corporations". (Emphasis Supplied). Section 22 provides:

"Any municipality may elect, by ordinance or resolution adopted by the governing body as defined herein to become a participant in the fund established by this act.

A copy of any such ordinance or resolution, duly certified, electing to join the fund and to make the required contributions thereto under the provisions of this act, shall be filed with the board of trustees of the Public Employees' Retirement Fund of Arizona. Such ordinance or resolution shall designate by departmental, divisional, occupational or other definable classification, the employees who are to become members of the fund. Membership in the fund of any municipality or any group of employees thereof shall be subject to the acceptance and approval of the board of trustees of the Public Employees' Retirement Fund of Arizona. The effective date of participation of any municipality as to the original group of employees designated, or as to any additional group of employees subsequently covered, shall be January 1

of the year after the year of approval of membership of any such group of employees by the board. All persons within the group of employees designated by the municipality for membership in the fund, as approved by the board, shall be required to become members of the fund subject to the conditions as to membership imposed by the provisions of this act, shall be entitled to participate in the benefits prescribed by the provisions of this act, and shall make the necessary contributions in accordance with the provisions hereof.

Any municipality after having joined the fund and having been a participant therein, shall be permitted to withdraw from the fund, under the conditions prescribed in Section 25 hereof.

The board of trustees shall, with the aid of its actuary, prepare a circular of information relative to the retirement fund established by this act, showing estimates of the cost thereof to municipalities, the benefits to be derived therefrom and such other information as may be deemed appropriate. Any estimates of cost made at the request of any municipality shall be paid for by the municipality concerned."

"Governing Body" is defined in the act (Section 4) as "\* \* \* the county board of supervisors, the city council, the trustee of a town, and board of school trustees, as the case may be". (Emphasis Supplied.) Construing together the definitions of "municipality" and "governing body", we have concluded that "school corporations" should be interpreted to mean "school district". Such an interpretation would harmonize the definitions and would seem to carry out the intent of the act.

It is our opinion then, that school districts may elect to enter into the State Retirement Plan in accordance with the procedure outlined in Section 22 above. Section 26 deals with the entrance into the Plan of those employees of a municipality who are members of an existing retirement fund, they being given the option of electing to enter into the State Plan.

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Your letter to Governor Garvey, however, concerned non-certificated employees of the school districts, persons who are neither members of nor eligible for membership either in the Teachers' Retirement System or any retirement system other than the new State Plan. The conclusion we have reached as to such members is: When and if the school district elects to become a participant in the Public Employees' Retirement Fund through ordinance or resolution of the board of school trustees, these persons being designated by said ordinance or resolution, they will become members of the Fund subject to the conditions as to membership imposed by the provisions of the act, will be entitled to participate in the benefits prescribed therein, and will be required to make necessary contributions in accordance with said provisions.

As the Public Employees' Retirement Act provides for the entrance into the State Plan of those members with whom your letter was concerned, there would seem to be no necessity to either enact new or amend existing legislation so as to specifically affect such persons.

We hope this supplies a solution to the problem which was presented in your letter of May 17, 1949.

Very truly yours,

FRED O. WILSON  
Attorney General

RICHARD C. BRINEY  
Assistant Attorney General

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